

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas upper tier acres if the responsible official determines the activity is consistent with the applicable land management plan, and:

(1) Tree cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(2) Tree cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas outside upper tier acres if the responsible official, unless otherwise noted, determines the activity is consistent with the applicable land management plan, one or more of the roadless area characteristics will be maintained or improved over the long-term with the exception of paragraph (5) and (6) of this section, and one of the following circumstances exists:

(1) The Regional Forester determines tree cutting, sale, or removal is needed to reduce hazardous fuels to an at-risk community or municipal water supply system that is:

(i) Within the first one-half mile of the community protection zone, or

(ii) Within the next one-mile of the community protection zone, and is within an area identified in a Community Wildfire Protection Plan.

(iii) Projects undertaken pursuant to paragraphs (c)(1)(i) and (ii) of this section will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(2) The Regional Forester determines tree cutting, sale, or removal is needed outside the community protection zone where there is a significant risk that a wildland fire disturbance event could adversely affect a municipal water supply system or the maintenance of that system. A significant risk exists where the history of fire occurrence, and fire hazard and risk indicate a serious like-

lihood that a wildland fire disturbance event would present a high risk of threat to a municipal water supply system.

(i) Projects will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(ii) Projects are expected to be infrequent.

(3) Tree cutting, sale, or removal is needed to maintain or restore the characteristics of ecosystem composition, structure and processes. These projects are expected to be infrequent.

(4) Tree cutting, sale, or removal is needed to improve habitat for federally threatened, endangered, proposed, or Agency designated sensitive species; in coordination with the Colorado Department of Natural Resources, including the Colorado Division of Parks and Wildlife.

(5) Tree cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(6) Tree cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

**§ 294.43 Prohibition on road construction and reconstruction.**

(a) *General.* A road may not be constructed or reconstructed in a Colorado Roadless Area except as provided in paragraphs (b) and (c) of this section.

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road may only be constructed or reconstructed in Colorado Roadless Area upper tier acres if the responsible official determines that the conditions in subsection 1 or 2 are met.

(1) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty, or

(2) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event that, without intervention, would cause the loss of life or property.

(3) For any road construction/reconstruction authorized pursuant to this

provision, subject to the legal rights identified in 36 CFR 294.43(b)(1), the responsible official must determine:

- (i) Motorized access, without road construction is not feasible;
- (ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;
- (iii) Road construction is consistent with the applicable land management plan direction;
- (iv) Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat; and
- (v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road or temporary road may only be constructed or reconstructed in Colorado Roadless Areas outside upper tier acres if the responsible official determines:

- (1) That one of the following exceptions exists:
  - (i) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;
  - (ii) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a forest road and that cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for administrative or public access, public health and safety, or uses authorized under permit, easement or other legal instrument;
  - (iii) Road reconstruction is needed to implement a road safety improvement project on a forest road determined to be hazardous on the basis of accident experience or accident potential on that road;
  - (iv) The Regional Forester determines a road or temporary road is needed to allow for the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree with the use

of the road limited to the water right identified in the pre-existing water court decree (see also §294.44(b)(2));

(v) A temporary road is needed to protect public health and safety in cases of imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(vi) The Regional Forester determines a temporary road is needed to facilitate tree cutting, sale, or removal (§294.42(c)(1)) within the first one-half mile of the community protection zone to reduce the wildfire hazard to an at-risk community or municipal water supply system;

(vii) The Regional Forester determines a temporary road is needed to facilitate tree cutting, sale, or removal (§294.42(c)(3)) within the first one-half mile of the community protection zone to maintain or restore characteristics of ecosystem composition, structure and processes;

(viii) A temporary road is needed within a Colorado Roadless Area pursuant to the exploration or development of an existing oil and gas lease that does not prohibit road construction or reconstruction, including the construction of infrastructure necessary to transport the product, on National Forest System lands that are under lease issued by the Secretary of the Interior as of July 3, 2012. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction within a Colorado Roadless Area beyond that which was authorized by the terms and conditions of the lease at the time of issuance; or

(ix) A temporary road is needed for coal exploration and/or coal-related surface activities for certain lands within Colorado Roadless Areas in the North Fork coal mining area of the Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork coal mining area displayed on the final Colorado Roadless Areas map. Such roads may also be used for collecting and transporting coal mine methane. Any buried infrastructure, including pipelines, needed for the capture, collection, and use of coal mine

methane, will be located within the rights-of-way of temporary roads that are otherwise necessary for coal-related surface activities including the installation and operation of methane venting wells.

(2) If proposed road construction/reconstruction meets one of the exceptions, subject to the legal rights identified in § 294.43(c)(1), the responsible official must determine:

(i) Motorized access, without road construction is not feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;

(iii) Road construction is consistent with the applicable land management plan direction;

(iv) Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(d) *Road construction/reconstruction/decommissioning project implementation and management.* The following elements will be incorporated into any road construction/reconstruction projects implemented within Colorado Roadless Areas.

(1) *Road construction/reconstruction.* If it is determined that a road is authorized in a Colorado Roadless Area, conduct construction in a manner that reduces effects on surface resources, and prevents unnecessary or unreasonable surface disturbance.

(2) *Road decommissioning.* Decommission any road and restore the affected landscape when it is determined that the road is no longer needed for the established purpose prior to, or upon termination or expiration of a contract, authorization, or permit, if possible; or upon termination or expiration of a contract, authorization, or permit, whichever is sooner. Require the inclusion of a road decommissioning provision in all contracts or permits. Design decommissioning to stabilize, restore, and revegetate unneeded roads to a more natural state to protect resources

and enhance roadless area characteristics. Examples include obliteration, denial of use, elimination of travelway functionality, and removal of the road prism (restoration of the road corridor to the original contour and hydrologic function).

(3) *Road designations.* The designation of a temporary road constructed or reconstructed pursuant to this subpart may not be changed to forest road except where a forest road is allowed under paragraphs (b) and (c) of this section.

(4) *Road use.* Use of motor vehicles for administrative purposes by the Forest Service and by fire, emergency, or law enforcement personnel is allowed. All roads constructed pursuant to paragraphs (b) and (c) of this section shall prohibit public motorized vehicles (including off-highway vehicles) except:

(i) Where specifically used for the purpose for which the road was established; or

(ii) Motor vehicle use that is specifically authorized under a Federal law or regulation.

(5) *Road maintenance.* Maintenance of roads is permissible in Colorado Roadless Areas.

**§ 294.44 Prohibition on linear construction zones.**

(a) *General.* A linear construction zone may not be authorized in Colorado Roadless Areas except as provided in paragraph (b) and (c) of this section and § 294.48 (a).

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see § 294.43(c)(1)(iv));

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph